

NOT DESIGNATED FOR PUBLICATION

COURT OF APPEAL

STATE OF LOUISIANA

FIRST CIRCUIT

2008 CA 1985

RICHARD M. CHASHOUDIAN & NICOLE CHASHOUDIAN

VERSUS

**LEONARD PATE AS TRUSTEE OF THE KATHLEEN REGES
LIVING TRUST & LEONARD PATE**

Judgment rendered: MAY 26 2009

**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, State of Louisiana
Suit Number: 543,703; Division: N (27)
The Honorable Donald R. Johnson, Judge Presiding**

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Richard Chashoudian & Nicole
Chashoudian**

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**Counsel for Defendant/Appellee
Leonard Pate as Trustee of the
Kathleen Reges Living Trust &
Leonard Pate**

BEFORE: CARTER, C.J., WHIPPLE AND DOWNING, JJ.

Carter, C.J. concurs
Whipple, J. concurs.
by PDS

DOWNING, J.

Richard M. and Nicole Chashoudian appeal two judgments rendered against them and in favor of Leonard Pate, as trustee of the Kathleen Reges Living Trust (“the Trust”), and Leonard Pate dated March 4, 2008 and March 6, 2008. **This appeal addresses the March 6, 2008 judgment**, although the issues are intertwined.¹ For the following reasons, we reverse in part the judgment of the trial court, we affirm in part, and we remand for further proceedings.

PERTINENT FACTS AND PROCEDURAL HISTORY

Kathleen Reges was the owner of purebred, champion-quality wire fox terrier dogs when she died in July 2005. On Reges’s death, the Trust became the owner of her dogs. The Chashoudians are world-class trainers for this breed of dog, and Reges was boarding at least four of her terriers with the Chashoudians. Apparently, Reges and the Chashoudians had an oral contract in which Reges paid the Chashoudians \$2,500.00 per month for the care and training of the dogs.

After Reges’s death, a dispute arose between the Chashoudians and Pate, the trustee, over expenses for the dogs. Pate paid the \$2,500.00 for two months, but on October 17, 2005, he advised the Chashoudians in writing that all agreements were cancelled. He requested all records for Reges’s dogs in the Chashoudians’ possession. In November 2005, he made an additional payment of \$2,500.00. He made no more payments for the care of the dogs. He did not request return of the dogs until he did so in a letter dated December 17, 2005.

After correspondence and demands back and forth, the Chashoudians filed suit against Pate and the Trust in May 2006 for services rendered in caring for the dogs. They also obtained a non-resident writ of attachment for four dogs, which seized the dogs, in place, and appointed the Chashoudians as their keepers. In June 2006, Pate filed a reconventional demand asserting conversion of property and

¹ The appeal of the March 6, 2008 judgment is addressed in a companion case, 2008CA2111.

seeking a writ of sequestration and injunctive relief. The Chashoudians amended their petition to assert a right of pledge and retention pursuant to La. C.C. arts. 3224 and 3225. The dogs were released to Pate by order dated September 5, 2006.

The principal and reconventional demands came on for bench trial on February 26, 2007. The trial court entered two judgments in favor of Pate. The first, a partial final judgment, was signed March 4, 2008, and addressed Pate's claims in reconvention. The judgment states that "said dogs were improperly seized through a writ of attachment" by the Chashoudians. The trial court then issued decrees as follows:

- **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the claims of the plaintiff-in-reconvention, Leonard Pate, are hereby granted;
- **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that, within thirty (30) days of the signing of this order, the defendants-in-reconvention shall produce to Pate all property of the Trust, which is in their possession, including dogs, documents, awards, and any compensation from the use, sale or transfer of the dogs, and the defendants-in-reconvention shall give a full accounting of all property not currently in their possession;
- **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that any future receipt of property of the Trust by the defendants-in-reconvention shall be produced to Pate, including, but not limited to, the dog with the call name of "Leo", and any compensation from the lease of said dog;
- **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that all costs of these proceedings, judicial interest and attorney fees (\$21,619.50) of the plaintiff-in-reconvention, shall be paid by the defendants-in-reconvention.

The second final judgment, signed on March 6, 2008, addressed the Chashoudians' claims. The judgment stated that "any prior agreements with Kathleen Reges were properly terminated by the Trust in correspondence, dated October 17, 2005, and that no subsequent expenses of the plaintiffs were necessary." The trial court then issued decrees as follows:

- **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the claims of the plaintiffs for payment of services are hereby dismissed;
- **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that claims of the plaintiffs for any expenses incurred after October 17, 2005 are hereby dismissed;

- IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all costs of these proceedings are assigned to the plaintiffs.

The Chashoudians filed motions for new trial on both judgments, which were denied. They now appeal asserting five assignments of error, as follows:

1. The trial court erred by not awarding the Chashoudians the costs and expenses they incurred during the 11-1/2 months in which the Chashoudians maintained the possession and provided care and daily sustenance to the dogs, or by awarding the Chashoudians their necessary expenses in caring for the dogs.
2. The trial court erred by failing to recognize that the seizure by the Chashoudians was proper because the Chashoudians held a privilege, in the nature of a pledge, for expenses incurred in caring for the dogs.
3. The trial court erred in finding that the seizure of the dogs was improper, pursuant to La. R.S. 13:3881 and /or any of the exceptions stated thereunder, because the statute is inapplicable to the facts presented.
4. The trial court erred by awarding attorneys' fees as a result of an alleged wrongful seizure because no wrongful seizure occurred or, at a minimum, by failing to limit the award of attorneys' fees to those related to securing the return of the seized dogs.
5. The trial court erred by requiring that the Chashoudians give certain property to Pate, give a full accounting for all property held by the trust, and pay Pate certain lease compensation.

DISCUSSION

This opinion addresses the first assignment of error. This is the only assignment of error directly raised under the March 6, 2008 judgment regarding the Chashoudians' claims. The Chashoudians appear to accept the trial court's finding that any contract ended on October 17, 2005. They argue, however, that they are entitled to recover expenses for preservation of the dogs while they were in their possession. They cite La. C.C. art. 527, which provides:

The evicted possessor, whether in good or in bad faith, is entitled to recover from the owner compensation for necessary expenses incurred for the preservation of the thing and for the discharge of private or public burdens. He is not entitled to recover expenses for ordinary maintenance or repairs.

They argue that these expenses exceed \$2,500.00 per month.

We agree that under Art. 527, the Chashoudians are entitled to recover the necessary expenses incurred for the preservation of the dogs while in their possession. Even Pate concurs in brief that food is a necessary expense for the dogs, although he argues without citation to authority that dog food is excluded “maintenance.” We disagree with this argument.

Mrs. Chashoudian pled and testified that the dogs’ expenses were paid through October 2005. Pate agrees that he paid for the dogs’ care through October 2005. Accordingly, Pate is responsible to the Chashoudians for the necessary expenses incurred for the preservation of the dogs while in their possession after October 2005. We conclude, therefore, that the trial court erred in finding that no expenses after October 17, 2005 were necessary.

The Chashoudians’ first assignment of error has merit. We will reverse the judgment of the trial court insofar as it dismissed the “claims of the plaintiffs for any expenses incurred after October 17, 2005.” However, we are unable to discern from the record which expenses were necessary expenses incurred for the preservation of the dogs while in the Chashoudians’ possession. Accordingly, we will remand this matter to the trial court for a determination of such necessary expenses.

DECREE

We reverse the March 6, 2008 judgment in this matter insofar as it dismissed the “claims of the plaintiffs for any expenses incurred after October 17, 2005.” We remand this matter to the trial court for a determination of the necessary expenses incurred for the preservation of the dogs while in the Chashoudians’ possession. In all other respects, the judgment is affirmed. Costs of this appeal are assessed to Leonard Pate, individually and as trustee of the Kathleen Reges Living Trust.

REVERSED IN PART; AFFIRMED IN PART; REMANDED